

Serial No.: 09/751,407

Docket No.: 16,023

Amendment dated 25 February 2004

Reply to Office Action mailed 03 December 2003

**REMARKS/ARGUMENTS**

This application has been reconsidered carefully in light of the Office Action dated as mailed on 03 December 2003. A careful reconsideration of the application by the Examiner in light of the foregoing amendments and the following remarks is respectfully requested.

This response is timely filed as it is filed within the three (3) month shortened statutory period for response to the outstanding Office Action.

**Request For Telephone Interview**

Applicants' undersigned attorney requests a telephone interview with the Examiner. The undersigned requests this interview if the arguments are not deemed sufficient to place the application in condition for allowance. If the Examiner feels the claims are not allowable for any reason, then please telephone the undersigned, Eric T. Krischke, at 847.490.1400.

**Amendments to the Specification**

Applicants have amended the specification at page 17, lines 9-20. Support for this amendment is found in the Definition Section of Applicants' specification at page 8, lines 11-13, and in original dependent Claims 7-9.

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### **Amendments to the Claims**

By the above Amendment, Applicants have amended dependent Claims 14 and 15 to better claim the subject matter of Applicants' invention. Support for this amendment is found in Applicants' specification at page 18, lines 6-8.

Claims 1-6, 8-12, 14-16 and 26-34 remain in the application.

### **Claim Rejections - 35 U.S.C. § 102(b)**

Claims 1-6, 8-12, 14-16 and 26-34 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,681,302 ("Melbye et al.").

The present invention is directed to a stretch edge elastic laminate ("SEEL") material that includes an elastic layer 15 having at least one elastic zone 20 and at least one gasket zone 30. The elastic zone 20 comprises a plurality of elastic filaments 22 substantially aligned in a machine direction and laminated to at least one facing layer 26, 28. The gasket zone 30 is formed or defined by a stretch edge 31 positioned along a length of a lateral edge region of the SEEL material and substantially aligned in a machine direction.

As set forth in the DEFINITION section of Applicants' specification, at page 8, lines 5-14, a "stretch edge" includes an elastic film or plug adjacent to at least one facing layer at one or both edges (i.e. extending all the way to one or both edge boundaries) of the laminate. The elastic film or plug desirably has a thickness

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of about 0.003 inch to about 0.015 inch, *and a width-to-thickness ratio of greater than about 5, more desirably greater than about 10, still more desirably about 15 to about 80.* *Filaments, by contrast, typically have a width-to-thickness ratio not more than about 2.*

As shown in Fig. 5, after the laminate material is passed through the nip rolls 270 and allowed to relax and/or retract to form the SEEL 10, the SEEL 10 is slit or cut through a general centerline 25 of each wide elastic member 24 to form a corresponding stretch edge 31 (including elastic film or plug 32) positioned along each lateral edge region 27, 29 of the SEEL 10. As a result of the slitting of the laminate through each wide elastic member 24, the SEEL 10 will have a continuous gasket zone 30, defined by the stretch edge 31, positioned along each lateral edge region 27, 29.

Melbye et al. discloses an elastic sheet-like composite material comprising a plurality of elongate elastic strands and one or more sheets of flexible material anchored at bonding locations to longitudinally spaced portions of the elastic strands. The flexible material sheets include arcuate portions that project from the elongate surface portions of the elastic strands between the bonding locations, as shown in Figs. 2, 5 and 16 for example. The elastic sheet-like composite is formed by feeding the flexible material sheet through meshing corrugating members each

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including a plurality of ridges about the corrugated member periphery. Spaced strands of molten thermoplastic material are extruded onto the anchor portions of the flexible sheet material.

Melbye et al. also discloses a method for varying the diameter of the strands by either changing the pressure in the extruder through which the strands are extruded and/or by changing the speed at which the first corrugating member, and thereby the first sheet material, is moved. Melbye et al. also discloses the use of die plates having openings of different diameters through which the strands are extruded. However, as acknowledged by the Examiner, such round strands will have a ratio of width to thickness of about 1.00.

At paragraph 19 of the final Office Action, the Examiner rejected Claims 1-6, 8-12, 14-16 and 26-34 under 35 U.S.C. § 102 (b) as being anticipated by Melbye et al. The Examiner maintained his rejection of 10 April 2003, alleging that he considered Applicants' arguments regarding the amendments to independent Claims 1 and 26 (requiring the limitations that the elastic filaments have a width-to-thickness ratio of less than about 2 and the elastic film or plug has a width-to-thickness ratio of greater than about 5) but found that they were not persuasive because "to one of ordinary skill in the art the width to the thickness comparison is conventional regarding stretch edge laminates."

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Melbye et al. does not disclose each and every element or limitation of independent Claims 1 and/or 26. Melbye et al. does not disclose a stretch edge elastic laminate comprising “*... at least one stretch edge positioned along a first lateral edge of the elastic laminate, the at least one stretch edge forming a first gasket zone, and including an elastic film or plug having a width-to-thickness ratio greater than about 5,*” as required by independent Claim 1. Nor does Melbye et al. disclose a disposable garment comprising a stretch edge elastic laminate, wherein the stretch edge elastic laminate comprises “*... an elastic film or plug in at least one lateral edge region of the elastomeric layer, the elastic film or plug having a width-to-thickness ratio greater than about 5; ... wherein a lateral edge of at least one elastic film or plug is aligned with a lateral edge of each of the first and second facing materials,*” as required by independent Claim 26. Thus, Melbye et al. does not disclose each and every element or limitation of independent Claims 1 and/or 26, as required for a reference to anticipate a claim under 35 U.S.C. § 102.

Further, the missing subject matter is not inherent or necessarily disclosed in Melbye et al.

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear

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that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) (quoting *Hansgirg v. Kemmer*, 102 F.2d 212, 214, 40 USPQ 665, 667 (CCPA 1939)) provides: Inherency, however may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient. *Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1262, 20 USPQ 1746, 1749-50 (Fed. Cir. 1991).

Thus, the missing element or function must necessarily result from Melbye et al.

Melbye et al. merely discloses a method for varying the diameter of the extruded strands, which are positioned between two flexible materials and anchored at bonding locations to form a composite material. However, as acknowledged by the Examiner, such round strands will have a ratio of width to thickness of about 1.00. Thus, the Melbye et al. process does not necessarily produce a stretch edge including an elastic film or plug having a width-to-thickness ratio greater than about 5, as required by Applicants' claimed invention.

As stated by the Federal Circuit:

For a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in the prior art. ... Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed invention, that presumed knowledge does not grant a license to read into the prior art reference teachings that are not there. *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 43 USPQ 2d 1481, 1490 (Fed. Cir. 1997).

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Melbye et al. does not disclose each and every element or limitation of independent Claims 1 and/or 26, as required for a reference to anticipate a claim under 35 U.S.C. § 102. Accordingly, Applicants respectfully request withdrawal of this rejection.

Claims 2-6, 8-12 and 14-16 depend from and further limit independent Claim 1; and Claims 27-34 depend from and further limit independent Claim 26. Thus, the above Amendment and remarks overcome the rejection of Claims 1-6, 8-12, 14-16 and 26-34 as being anticipated by Melbye et al. Accordingly, Applicants respectfully request withdrawal of this rejection.

### **Conclusion**

It is believed that the above Amendment places all pending claims in condition for allowance and notification to that effect is solicited. However, should the Examiner detect any remaining issue or have any question, the Examiner is kindly requested to contact the undersigned, preferably by telephone, in an effort to expedite examination of the application.

Respectfully submitted,



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